



PrivateEdge

Guide to managing poorly performing employees

It is important that poor performance is managed effectively, but commonly businesses find this one of the most difficult areas to manage and, as a result, do nothing, which compounds the problem and risks claims for unfair dismissal. This guidance note contains advice on best practice for managing poor performers and is compliant with the ACAS Code of Practice. Have you got a redundancy situation?

What are the key principles of managing poor performance?

The key principles of managing poor performance are:

1. Set clear performance standards
2. Investigate the employee's apparent failings
3. Implement a fair poor performance procedure
4. Provide appropriate warnings
5. Provide a reasonable opportunity to improve
6. Monitor progress

Setting clear performance standards

- Ensure employees are made aware from the outset of the standards that are expected from them in their work
- Ensure that you put in place adequate job descriptions and where appropriate put in place written policies and procedures that govern employees' work.
- Implement clearly communicated "SMART" (Specific, measurable, achievable, realistic and time-limited) targets.

Investigating performance failings

- Establish whether there is an underlying cause for the poor performance. For example, an employee may not know what is required of them, need additional training, be unwell, experiencing personal problems or problems in the workplace. On the other hand, it may be a genuine lack of ability to do the job competently.
- The investigation should include reviewing the employee's job description, appraisal and training records and any other relevant documents, monitoring their work and, if appropriate, interviewing them and their managers about the performance concerns.
- The employee should be spoken to informally, at least initially. This should be done sensitively and confidentially, where no other employees can see or overhear.
- Investigation may bring to light line management's own failings, in which case appropriate steps should be taken to address these failings. If the employee has not been provided with the appropriate support or guidance, ensure that measures are put in place for this to happen. Identify any training needs.

- Be aware of discrimination. Consider whether the employee may be disabled and their disability prevents them from performing to the required standard. In such cases be mindful of your duty to make reasonable adjustments under the Equality Act 2010.
- Ensure that the appraisal process for your employees is completed thoroughly and documented. It is far easier to establish a pattern of poor performance where employees are properly monitored and reviewed.
- Consider whether the problem really amounts to poor performance (“can’t do”) or whether it may appropriately be dealt with as misconduct (“won’t do”).

Implementing a poor performance procedure

- In first instance or minor cases, it may be that an informal warning or discussion is all that is required to rectify a performance problem.
- If more formal action is deemed necessary, you should implement your poor performance procedure, if you have one, or otherwise follow the principles set out in this note and the ACAS Code of Practice on Disciplinary Procedures, which applies to poor performance.
- If you decide to take formal action, you should write to the employee setting out the concerns regarding their performance, the reasons for those concerns, providing them with the evidence from the investigation, and invite them to a formal capability meeting. The letter should also explain the likely outcome for if you decide that performance has been unsatisfactory.
- You should ideally have a note-taker present at any formal meeting. The employee should be permitted to ask questions, respond to the evidence put forward, provide any evidence they may have and put their views across.
- At the meeting, you should examine the evidence and establish the likely reasons for the employee’s poor performance in discussion with them, and identify any training or support needed.
- The employee has the right to bring a colleague or a trade union representative to the meeting.
- You should communicate your decision to the employee in writing as soon as possible after the meeting.
- The employee has the right to appeal any decision taken at a performance review meeting, in which case an appeal meeting should be convened, preferably with a more senior manager.

Appropriate formal warnings

- If at the conclusion of the meeting you decide that there have been performance failings, the employee should be given formal warning that you are dissatisfied with their work. The warning should be in writing and should set out:
 - The areas in which performance has fallen below required standards.
 - Targets for improvement and the timescale in which improvement is required.
 - Any assistance to be provided to assist the employee to improve.
 - The consequences of a failure to improve.
 - How long the warning will remain live, after which it should be disregarded.
- The employee should not be dismissed for a first instance of poor performance, unless their performance failing is so serious that it amounts to gross negligence.
- It is good practice to give an employee at least two warnings, and therefore two opportunities to improve, before any dismissal for poor performance. However, in some cases where the failings are more serious, it may be appropriate to go straight to a final written warning



Reasonable opportunity to improve

- To act reasonably, the employee should be given a reasonable opportunity to improve their performance once a formal performance warning has been given.
- What is a reasonable timeframe to demonstrate improvement will depend on the particular circumstances, including the nature and degree of the failing.
- In any event, ensure that both you and the employee are clear on the required standards that the employee has to meet and the timeframe within which the improvement must be improved. Be careful not to set unrealistic targets.
- Check with the employee that any support and training needs have been identified. Where reasonable support/training needs have been identified, ensure these are implemented.

Monitoring progress and review

- Ensure that the employee's progress is properly monitored during the improvement period and keep appropriate records. Have regular review meetings with the employee.
- A final review with the employee should take place at the end of the improvement period, when you can decide what further action, if any, is needed.
- If there has been a failure to improve, a further poor performance meeting should be held in accordance with the principles above.



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